

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PAUL M. NGOBENI

Plaintiff

VS.

) CIVIL ACTION NO.

) 04-30167- MAP

**CHRISTOPHER M. BROWN; Individually
And In His Official Capacity;
OFFICER TETREAULT; Individually And In His
Official Capacity; PAULA C. MEARA
Individually And In Her Official Capacity
as Police Chief; MARCUS LAWRENCE,
Individually And In His Official Capacity;
M. DUMAS; Individually And In His Official
Capacity; HAMILTON WRAY; Individually
And In His Official Capacity;
THOMAS HERVIEUX; Individually And In
His Official Capacity; KENNETH MURRAY
Individually And In His Official Capacity**

DECEMBER 28, 2004

MOTION FOR EXTENSION OF TIME TO EFFECT SERVICE OF PROCESS

Plaintiff respectfully requests this Court grant him a **forty-five (45)** days extension of time within which to effect proper service on all named defendants for good cause shown. In support of his motion, plaintiff states the following:


1. Under Rule 4(j)(2) of the Federal Rules of Civil Procedure, service upon a state, a municipal corporation, or other governmental organization "shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state." The plaintiff has, prior to the expiration of the 120 days attempted to effect service on all defendants and was stalled and given wrong information on the whereabouts of the defendants police officers whose home addresses are not public information. The plaintiff has succeeded in causing service of the official capacity summonses to be made by indifferent person but none of the individual defendants have been served as some have been laid off or are no longer employed by the City of Springfield.

2. With regard to the individual defendants, the Federal Rules provide that service upon an individual may be effected by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. Fed.R.Civ.P. (4)(e)(2). In hand or abode service on the individual defendants has been stalled by the refusal of the City officials to disclose abode information required by the process servers hired by plaintiff. Since the said individual defendants have not authorized anyone to accept service on their behalf, plaintiff has a compelling need for additional time to effect service through alternative means.

3. Plaintiff has failed to effect valid service within 120 days as required by the Federal Rules. In such a case, the Rules provide as follows: If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. Fed.R.Civ.P. 4(m). "The general rule is that 'when a court finds that service is insufficient but curable, it generally should quash the service and give the plaintiff an opportunity to re-serve the defendant.'" *Gregory v. United States/United States Bankruptcy Court for the Dist. of Colo.*, 942 F.2d 1498, 1500 (10th Cir. 1991) (quoting *Pell v. Azar Nut Co.*, 711 F.2d 949, 950 n. 2 (10th Cir. 1983); see **5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure** § 1354 (3d ed. 2004). Since it appears that Plaintiff, if given the opportunity, would be able to effect proper service, he should be given a reasonable time to do so.

WHEREFORE, plaintiff requests that this Motion be granted.

PLAINTIFF,

BY: 

PAUL M. NGOBENI

Federal Bar No. Ct 08187
914 Main Street, Suite 206
East Hartford, CT 06108
(860) 288-3155

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served first class mail postage pre-paid on this 28th day of December 2004 to:

Office of City Solicitor

PAULA C. MEARA

MARCUS LAWRENCE,

M. DUMAS;

HAMILTON WRAY;

THOMAS HERVIEUX;

KENNETH MURRAY

CHRISTOPHER M. BROWN;

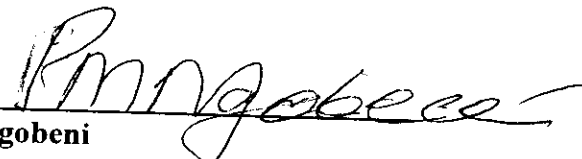
OFFICER TETREAULT;

c/o Massachusetts Department of State Police

Office of Chief Legal Counsel

470 Worcester Road

Framingham, MA 01702


Paul M. Ngoben